IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9515 of 1992

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AHMEDABAD MUNICIPAL CORPN - Petitioner(s)

Versus

AHMEDABAD MUNICIPAL NOWKAAR MANDAL & 1 - Respondent(s)

==========

Appearance :

MR DEEPAK RAVAL for MR ANAND for Petitioner No(s).: 1.

NOTICE UNSERVED for Respondent No(s).: 1.

NOTICE SERVED for Respondent No(s).: 2.

==========

CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

.

1. This petition is directed against the judgment and award dated 24th August, 1992 passed by the Industrial Tribunal in Reference [I.T.] No. 387/82, whereby the Industrial Tribunal has ordered his

appointment to the higher post with full financial benefits.

2. The short facts of the case are that the respondent no. 1 raised an industrial dispute on behalf of workman i.e. K.H. Shaikh who was working as a Fitter in the Central Workshop of the petitioner Corporation. It is the case of the petitioner Corporation that the said workman was given the charge of the post of Foreman as a part of stop gap arrangement and, therefore, he cannot claim for the said post. It is further the case of the petitioner Corporation that the said post was thereafter filled up from the candidates who were called pursuant to the public advertisement. Thus, there was no question of giving the post to an unqualified person.

2.1. It is further the case of the petitioner that though there was no dispute with regard to educational qualification, the Industrial Tribunal held that the workman is wrongfully denied the appointment and hence, passed the impugned award. It is this award which is under challenge.

3. Mr. Raval learned advocate for the petitioner

contended that the Industrial Tribunal has committed an error in ordering appointment to the post of Foreman w.e.f. 16th September, 1982, with financial benefits, to the workman inasmuch as the workman was not qualified for the said post and that he had not worked for the said period.

4. Though served none appeared on behalf of the respondents. I have heard the learned counsel for the petitioner. This Court on 12th February, 1993, had passed the following order:-

> "In the facts of the case, implementation of the direction given by the Industrial Tribunal in the impugned award is stayed on the condition that the amount payable to the respondent-workman pursuant to the direction given by the Industrial Tribunal shall be deposited with the Industrial Tribunal latest by March 31, 1993. As and when the amount is deposited, the Tribunal shall permit 50% of the amount to be withdrawn by the respondent-workman without furnishing security and balance 50% shall be permitted to be withdrawn on furnishing security to the satisfaction of the Industrial Tribunal. If the amount is not deposited by March 31, 1993, interim relief granted herein, shall automatically stand vacated.

4.1. Since, the amount in question has been withdrawn by the workman, and by efflux of time, it is not proper

to consider the matter on merits at this stage. However, the reasoning adopted by the Industrial Tribunal is not proper inasmuch as a person is required to be promoted on his qualification and merit and not merely on the ground that he has worked during the period of stop gap arrangement. Thus, on this ground the impugned award is required to be set aside. But since the impugned award is exhausted, I am not inclined to set aside the impugned award.

5. In the result, the petition is disposed of. Rule is discharged with no order as to costs. It is clarified that this may not be treated as precedent in other similar matters.

[K.S. JHAVERI, J.]

/phalguni/